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*Federal Public Sector
Labour Relations and
Employment Board Act and
Federal Public Sector Labour
Relations Act*



Before a panel of the
Federal Public Sector
Labour Relations and
Employment Board

BETWEEN

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

TREASURY BOARD

Respondent

Indexed as

Public Service Alliance of Canada v. Treasury Board

In the matter of applications, under section 58 of the *Federal Public Sector Labour Relations Act*, for a determination of membership of an employee or a class of employees in a bargaining unit

Before: David Orfald, a panel of the Federal Public Sector Labour Relations and Employment Board

For the Applicant: Andrew Raven and Morgan Rowe, counsel

For the Respondent: Stefan Kimpton, counsel

Decided on the basis of written submissions,
filed November 30, 2017, January 15, 2018, June 12 and 26 and August 31, 2020.

REASONS FOR DECISION

I. Applications before the Board

[1] On November 30, 2017, the Public Service Alliance of Canada (“the bargaining agent”) filed 14 applications for the determination of questions of membership in bargaining units under s. 58 of the *Federal Public Sector Labour Relations Act* (S.C. 2003, c. 22, s. 2; “the *FPSLRA*”) concerning certain employees or classes of employees working at the Royal Canadian Mounted Police (“RCMP”), other than employees appointed to rank or reservists.

[2] This decision concerns five of those applications, which are for RCMP occupational sub-groups proposed for inclusion in the Program and Administrative Services (PA) Group bargaining unit represented by the bargaining agent. The remaining applications are addressed in four companion decisions.

[3] The Federal Public Sector Labour Relations and Employment Board (“the Board”) or its predecessors have confirmed the certification of the bargaining agent for the PA Group bargaining unit: *Public Service Alliance of Canada and Treasury Board*, PSSRB File No. 142-02-337 (19990607); *Treasury Board (Canada Border Services Agency) v. Public Service Alliance of Canada*, 2007 PSLRB 22; *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLREB 91.

[4] The employees covered by these applications were appointed as civilian members of the RCMP under the *Royal Canadian Mounted Police Act* (R.S.C., 1985, c. R-10). They are currently unrepresented, as historically this group was excluded from collective bargaining. However, as a result of the Supreme Court of Canada’s decision in *Mounted Police Association of Ontario v. Canada (Attorney General)*, 2015 SCC 1 (“*Mounted Police Association of Ontario*”), the definition of “employee” in the *FPSLRA* changed. As the RCMP is listed in Schedule IV to the *Financial Administration Act* (R.S.C., 1985, c. F-11), the Treasury Board is the employer (“the employer”) of these employees within the meaning of the *FPSLRA*.

[5] Before the Supreme Court of Canada’s decision in *Mounted Police Association of Ontario*, the federal government had indicated an intention to eliminate the civilian member category. In June of 2013, Parliament enacted the *Enhancing Royal Canadian Mounted Police Accountability Act* (S.C. 2013, c. 18). Section 86 of that legislation

provided the employer with the power to publish in the *Canada Gazette* a date on which the RCMP civilian members would be “deemed” to have been appointed to a position under the *Public Service Employment Act* (S.C. 2003, c. 22, ss. 12, 13). Originally, the deeming date was scheduled as April 26, 2018 (*Canada Gazette*, Part I, Vol. 151, No. 6, p. 672) and later scheduled as May 21, 2020 (*Canada Gazette*, Part I, Vol. 152, No. 14, p. 1134), but it has since been delayed and has yet to be determined (*Canada Gazette*, Part I, Vol. 154, No. 18, p. 869). The transition from civilian members to public service employees is referred to in this decision as the “Categories of Employees” project.

[6] The employer provided its initial response to these applications on January 15, 2018, consenting to them in principle. Between March and May of 2018, another panel of the Board sought the parties’ clarification on a number of aspects of the applications. In May of 2018, that panel placed the applications in abeyance but invited the parties to contact it to propose dates for a teleconference, should they wish one.

[7] In January 2020, the employer contacted the Board to inquire on the status of the applications. I was then appointed a panel of the Board to hear them. An in-person case conference was held on February 13, 2020, at which time I determined that the parties would provide updated written submissions with respect to the applications.

[8] The applications are decided on the basis of the parties’ written submissions.

II. Summary of the facts

[9] This summary is based on materials included in the applications and the written submissions.

[10] Some 4000 RCMP civilian members are affected by the Categories of Employees project. They have been structured into a number of RCMP occupational groups and sub-groups. In preparation for the deeming date, the employer engaged in a process of “matching” the RCMP sub-groups to existing public service occupational groups, as possible. A match to a represented occupational group was communicated to the affected bargaining agent.

[11] For the RCMP occupational sub-groups covered by these applications, the parties agree that their duties match the definition of an existing public service

occupational group and classifications. The parties also note that the Categories of Employees project involved “pay-matching” the salaries of RCMP civilian members to their equivalent public service classifications.

[12] The following four applications concern employees in the noted RCMP occupational groups and sub-groups, which have been matched to the indicated public service classifications:

- 547-02-38 covers employees in the Clerk sub-group of the RCMP’s Special Police Services occupational group (SP-CK), which has been matched to the Clerical and Regulatory (CR) public service classification;
- 547-02-40 covers employees in the Administrative sub-group of the RCMP’s Special Police Services occupational group (SP-ADM), which has been matched to the Administrative Services (AS) public service classification;
- 547-02-45 covers employees in the Liaison sub-group of the RCMP’s Special Police Services occupational group (SP-LN), which has been matched to the Information Services (IS) public service classification; and;
- 547-02-46 covers employees in the Program Administration sub-group of the RCMP’s Special Police Services occupational group (SP-PDM), which has been matched to the Program Administration (PM) public service classification.

[13] Application 547-02-51 concerns the Word Processor sub-group of the RCMP’s Special Police Services occupational group (SP-WPO), which has been matched to the Secretarial, Stenographic and Typing (ST) public service classification. The employer reported that currently, this sub-group covers no positions.

[14] The CR, AS, IS, PM, and ST public service classifications apply to the PA public service occupational group as defined in the *Canada Gazette*, Part I, Vol. 140, No. 10, at pages 513 to 515, on March 11, 2006. That definition was in effect as of the date of application. A new definition of the PA public service occupational group was published in the *Canada Gazette*, Part I, Vol. 153, No. 10, at page 559, on March 9, 2019.

[15] The March 11, 2006, definition for the PA public service occupational group is as follows:

Program and Administrative Services Group Definition

The Program and Administrative Services Group comprises positions that are primarily involved in the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the Public Service.

Inclusions

Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one or more of the following activities:

- 1. the provision of administrative services, including adapting, modifying or devising methods and procedures, in support of Public Service policies, programs, services or other activities, such as those dealing with administrative, financial, human resources, purchasing, scientific or technical fields, including:*
 - a. the operation, scheduling or controlling of the operations of electronic equipment used in the processing of data for the purpose of reporting, storing, extracting and comparing information or for solving formulated problems according to prescribed plans;*
 - b. the operation, routine servicing and minor repair of a variety of cryptographic, facsimile, electronic mail and associated communications equipment in preparing, receiving, transmitting, and relaying messages; and the performance of related activities including recording receipt and dispatch times of traffic, priority allocation and distribution of message copies that require special knowledge of communication procedures, format, schedules, message traffic routes and equipment operation;*
 - c. the operation of bookkeeping, calculating, duplicating and mailing service or microphotography equipment to post data, calculate, produce copy, white-prints, blueprints, and other printed materials, prepare mail or produce and process microfilm;*
 - d. the collecting, recording, arranging, transmitting and processing of information, the filing and distribution of information holdings, and the direct application of rules and regulations;*
 - e. the provision of secretarial, word-processing, stenographic and verbatim-recording services and the operation of related electronic equipment; and*
 - f. the operation of micro-processor controlled telephone switching systems and peripheral equipment;*
- 2. the planning, development, delivery or management of government policies, programs, services or other activities directed to the public or to the Public Service;*
- 3. the planning, development, delivery or management of policies, programs, services or other activities in two or more*

administrative fields, such as finance, human resources or purchasing, directed to the Public Service;

4. the planning, development, delivery or management of government policies, programs, services or other activities dealing with the collection of taxes and other revenues from the public;

5. the planning, development and delivery of consumer product inspection programs;

6. the planning, development, delivery or management of the internal comprehensive audit of the operations of Public Service departments and agencies;

7. the planning, development, delivery or management of policies, programs, services or other activities dealing with the privacy of and access to information;

8. the research, analysis and provision of advice on employee compensation issues to managers, employees and their families or representatives;

9. the provision of advice, support, and training to users of electronic office equipment, both hardware and software;

10. the planning, development, delivery or management of policies, programs, services or other activities dealing with the management of property assets and facilities, information holdings or security services in support of the Public Service;

11. the research into public attitudes and perceptions and the analysis, development, recommendation and delivery of strategic communications plans and activities dealing with the explanation, promotion and publication of federal government programs, policies and services;

12. the planning, development, delivery or management of policies, programs, services or other activities dealing with the social development, settlement, adjustment and rehabilitation of groups, communities or individuals including the planning, development and delivery of welfare services;

13. the provision of advice on and the analysis, development and design of forms and forms systems;

14. the delivery of mediation or conciliation services dealing with disputes in collective bargaining and industrial relations within the jurisdiction of Part I of the Canada Labour Code; and

15. the leadership of any of the above activities.

Exclusions

Positions excluded from the Program and Administrative Services Group are those whose primary purpose is included in the definition of any other group and those positions at the Canada Border Services Agency that are primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada.

[16] The March 9, 2019, definition for the PA public service occupational group is as follows:

Program and Administrative Services (PA) Occupational Group Definition

The Program and Administrative Services Group comprises positions that are primarily involved in the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the public service.

Inclusions

Notwithstanding the generality of the foregoing, for greater certainty, it includes positions that have, as their primary purpose, responsibility for one of the following activities:

- 1. supporting or administering programs or services where the latitude for discretion is defined by a framework of established precedents and guidelines;*
- 2. planning, developing, delivering or managing policies, programs or services;*
- 3. providing direct administrative assistance to an individual or individuals performing an executive role;*
- 4. delivering societal reintegration or social, physical or psychological rehabilitation through the application of intervention planning, risk assessment, and relapse prevention strategies and practices; and*
- 5. applying a comprehensive knowledge of communications theories and principles to departmental communication policies, products or plans.*

Exclusions

Positions excluded from the Program and Administrative Services Group are those whose primary purpose is included in the definition of any other group and those positions at the Canada Border Services Agency that are primarily involved in the planning, development, delivery, or management of the inspection and control of people and goods entering Canada.

[17] The employer indicated that the new PA public service occupational group definition of March 9, 2019, was adopted in anticipation of a conversion to new classification standards anticipated to take effect in 2022. The full new group definition includes five sub-groups, namely, Program and Service Operations (PA-PVO), Program Development and Administration (PA-PDM), Executive Administrative Assistant (PA-EAA), Communications (PA-CM), and Rehabilitation and Reintegration

(PA-RHB). The employer further noted that to date, the new sub-group definitions cover no jobs or positions.

[18] The employer submitted that the March 11, 2006, PA public service occupational group definition be used in the context of these applications.

[19] The bargaining agent did not oppose the employer's position but argued in the alternative that the new PA public service occupational group definition still encompasses the work performed by the relevant RCMP occupational sub-groups. It argued that the new PA public service occupational group definition still reflects the same broad categories of work and that while the inclusion criteria have been streamlined, the group's general definition remains unchanged.

[20] I note that, in *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLREB 91, the Board modified the description of the PA Group bargaining unit to reflect the March 9, 2019, definition of the PA public service occupational group.

III. Reasons

[21] Section 58 of the *FPSLRA* provides the following:

58 On application by the employer or the employee organization affected, the Board must determine every question that arises as to whether any employee or class of employees is included in a bargaining unit determined by the Board to constitute a unit appropriate for collective bargaining, or is included in any other unit.

[22] I must consider these applications in relation to the bargaining unit described by the Board in *Treasury Board v. Public Service Alliance of Canada*, 2019 FPSLREB 91, which refers to the PA public service occupational group definition published in the *Canada Gazette*, Part I, Vol. 153, No. 10, at page 559, on March 9, 2019, despite that positions have yet to be classified in accordance with the new sub-groups in it.

[23] There is no dispute between the parties that the employees occupying positions in the SP-CK, SP-ADM, SP-LN, and SP-PDM RCMP occupational sub-groups perform duties that fall within the PA public service occupational group definition that was in effect as of the date of application.

[24] I am satisfied that the relevant RCMP sub-groups are reflected in the same broad categories of work in the new PA public service occupational group definition, namely,

“... positions that are primarily involved in the planning, development, delivery or management of administrative and federal government policies, programs, services or other activities directed to the public or to the public service.”

[25] Although there are currently no employees occupying positions in the Word Processor sub-group of the RCMP's Special Police Services occupational group (SP-WPO), I find that, were such positions staffed, their incumbents would form a class of employees for the purpose of section 58 of the *FPSLRA*, as long as they met the definition of "employee" in subsection 2(1). I make this finding recognizing the parties' mutual agreement and desire for certainty regarding their dealings with respect to the PA Group bargaining unit, as incidental to the attainment of the following objects in the preamble to the *FPSLRA*: effective labour-management relations; the collaborative efforts between the parties; the fair, credible and efficient resolution of matters arising in respect of terms and conditions of employment; and harmonious labour-management relations. This finding is also supported by policy considerations regarding the efficient administration of quasi-judicial resources. Finally, as the parties pointed out, the Board followed a similar approach in *Professional Institute of the Public Service of Canada v. Treasury Board*, 2018 FPSLREB 26 at para. 12.

[26] I therefore find that the employees and classes of employees covered by the applications are included in the PA Group bargaining unit.

[27] The bargaining agent requested that as part of its order allowing the applications, the Board make an order for the disclosure of employee contact information. It argued that bargaining agents have a well-established right to such information, citing *Bernard v. Canada (Attorney General)*, 2014 SCC 13 at paras. 24 to 33 and 40. It proposed that the Board remain seized of any issues encountered in disclosing it.

[28] For its part, the employer did not dispute that a bargaining agent has the right to employee contact information. It committed to providing that information for the employees covered by these applications, once the Board orders them included in the PA Group bargaining unit. It took the position that there is no need for an order from the Board in this respect.

[29] The employer has taken a clear position that it intends to provide the bargaining agent with the contact information of the employees covered by these

applications once they are included in the PA Group bargaining unit. If the bargaining agent encounters any difficulties in this regard, it has legal recourses available. I do not believe that an order to provide employee contact information is required at this time, but I do confirm the commitment made by the employer.

[30] For all of the above reasons, the Board makes the following order:

(The Order appears on the next page)

IV. Order

[31] The Board declares that the employees, other than those appointed to rank or reservists, occupying positions in the Royal Canadian Mounted Police's Clerk (SP-CK), Administrative (SP-ADM), Liaison (SP-LN), and Program Administration (SP-PDM) occupational sub-groups are included in the bargaining unit composed of "[a]ll employees of the Employer in the Program and Administrative Services group as defined in Part I of the Canada Gazette of March 9, 2019".

[32] The Board also declares that the class of employees, other than those appointed to rank or reservists, who may be employed in the Royal Canadian Mounted Police's Word Processor (SP-WPO) occupational sub-group and who meet the definition of "employee" in subsection 2(1) of the *FPSLRA*, form a class of employees included in the bargaining unit composed of "[a]ll employees of the Employer in the Program and Administrative Services group as defined in Part I of the Canada Gazette of March 9, 2019."

[33] The Board confirms the Treasury Board's commitment to providing the Public Service Alliance of Canada with employee contact information for the employees covered by these applications.

November 26, 2020.

**David Orfald,
a panel of the Federal Public Sector
Labour Relations and Employment Board**